

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-SCAN CORPORATION, a Washington
Corporation,

Plaintiff,

v.

ALFRESCO SOFTWARE AMERICAS,
INC., a Delaware Corporation,

Defendant.

No. 2:11-cv-00255 JCC

**ALFRESCO SOFTWARE AMERICAS,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

**NOTE ON MOTION CALENDAR:
March 9, 2012**

Defendant Alfresco Software Americas, Inc., (“Alfresco”) respectfully submits this Motion for Partial Summary Judgment. The Court should dismiss plaintiff T-Scan Corporation’s claims for fraud-in-the-inducement-of-a-contract and breach of contract because these two claims are barred by the doctrine of collateral estoppel. In a parallel lawsuit that proceeded to a jury verdict, T-Scan had a full and fair opportunity to try an issue that is fundamental to T-Scan’s fraud-in-the-inducement and breach of contract claims against Alfresco. T-Scan lost that trial. Under the doctrine of collateral estoppel, T-Scan should not be allowed to re-litigate this issue, and this Court should dismiss T-Scan’s fraud-in-the-inducement and breach of contract claims (leaving only T-Scan’s tortious interference claim involving matters peripheral to the core issues of this lawsuit).

I. INTRODUCTION

In the instant lawsuit, T-Scan alleges that it hired BPA Technologies, Inc. (“BPA”) to perform software development services and related services for T-Scan’s business—marshalling documents for law firms and insurance companies. T-Scan alleges that BPA failed by not timely delivering the desired completed product, and T-Scan admits that, in December 9, 2009, it terminated BPA’s ability to move forward with the work. First Amended Complaint (“FAC”) (dkt. no. 5) ¶ 40. T-Scan faults Alfresco because, according to T-Scan, Alfresco incorrectly represented that BPA had a certified Alfresco software consultant on staff. *See FAC passim*.

In its Prayer for Relief, T-Scan asks this Court to find, among other things, that BPA is liable for supposedly breaching its contract with T-Scan. *See FAC Prayer for Relief* ¶¶ 2-3. T-Scan admits that this requested finding is “the lynchpin” necessary to hold Alfresco liable, without which plaintiff’s attempt to “hold[] Alfresco liable as a result of the combination of BPA and Alfresco falls apart.” *See Plaintiff T-Scan Corporation’s Response In Opposition To Defendant Alfresco Software America’s Motion to Dismiss Pursuant to FRCP 12(b)(6) (“Resp. to Mot. to Dismiss”)* (dkt. no. 9) at 9:6-11. And, indeed, it is the lynchpin. Without this

1 determination that BPA was, in the eyes of the law, the cause of T-Scan's alleged damages,
2 T-Scan will be unable to prove an essential element of its fraud-in-the-inducement and breach
3 of contract claim against Alfresco: causation.

4 This "lynchpin" determination has been decided. On September 20, 2011, in *T-Scan*
5 *Corp. v. BPA Technologies*, No. C10-470 MJP (W.D. Wash. 2011), the jury found that,
6 regardless of the quality (or lack thereof) of BPA's performance, BPA was not liable to T-Scan
7 for its alleged failure to perform under the contract because T-Scan waived any "requirement
8 that BPA deliver the software, or portions thereof, by a particular date." See Declaration of
9 Stelman Keehnell in Support of Alfresco Software Americas, Inc.'s Motion for Partial
10 Summary Judgment ("Keehnell Decl.") Ex. D (Verdict at 2, *T-Scan Corp. v. BPA Techs., Inc.*,
11 No. 2:10-cv-470 (W.D. Wash. Sept. 20, 2011)). In short, T-Scan complained that BPA failed
12 to meet contractual deadlines for delivery of completed software modifications, and the jury
13 rejected T-Scan's claims because T-Scan itself was found to have "waived" any such deadlines.
14 The jury therefore awarded T-Scan no damages against the "lynchpin," BPA. T-Scan had a full
15 and fair opportunity to litigate this issue. The jury removed the lynchpin by finding that T-
16 Scan's own behavior eliminated any possibility of damages because T-Scan eliminated all
17 otherwise applicable deadlines for performance. T-Scan litigated the issue and lost. T-Scan
18 should be held to that result. Under the doctrine of collateral estoppel, T-Scan is barred from
19 re-litigating this issue.

20 Alfresco respectfully requests this Court to hold that T-Scan is collaterally estopped
21 from re-litigating this issue and to dismiss T-Scan's fraud and breach of contract claims with
22 prejudice.

23 **II. UNDISPUTED MATERIAL FACTS**

24 T-Scan first filed suit against BPA and Alfresco on March 19, 2010, alleging that BPA
25 breached its contract and alleging fraud in the inducement against both BPA and Alfresco. A
26 copy of the Complaint in *T-Scan Corp. v. BPA Techs., Inc.*, No. 2:10-cv-470 (W.D. Wash.

March 19, 2010) is attached as Exhibit A to the Keehnel Decl. The claims against Alfresco were dismissed without prejudice because, after ten months, T-Scan failed to properly serve Alfresco, could not show “good cause” for its failure to serve, and repeatedly failed to comply with the Court’s deadlines. *See* Keehnel Decl. Ex. B (Order on Mot. To Dismiss at 4, *T-Scan Corp. v. BPA Techs., Inc.*, No. 2:10-cv-470 (W.D. Wash. Jan. 21, 2011)). T-Scan’s fraud in the inducement claim against BPA was dismissed on summary judgment, and T-Scan’s breach of contract claim against BPA went to trial. *See* Keehnel Decl. Ex. C (Order Granting In Part And Denying In Part Defendant’s Motion for Summary Judgment). On September 16, 2011, the jury found in favor of defendant BPA. *See* Keehnel Decl. Ex. D (Verdict at 2, *T-Scan Corp. v. BPA Techs., Inc.*, No. 2:10-cv-470 (W.D. Wash. Sept. 20, 2011)). Specifically, the jury found BPA was not liable to T-Scan for breach of contract because T-Scan waived, through its own conduct or words, any requirement that BPA deliver the software by a particular date. *Id.* In other words, T-Scan’s core claim, in both cases, is that BPA could not deliver the desired software modifications in a timely manner, and the jury flatly rejected that core claim by finding that T-Scan waived all deadlines.

On February 15, 2011, while T-Scan’s suit against BPA was still pending, T-Scan initiated this lawsuit against Alfresco, bringing claims against Alfresco for fraud-in-the-inducement, breach of contract, and tortious interference with business relationship as to a non-party (Reva Solutions). At the heart of T-Scan’s fraud-in-the-inducement and breach of contract claims is T-Scan’s allegation that Alfresco fraudulently induced T-Scan to enter into a contract with BPA. *See* FAC ¶¶61-75. T-Scan alleges BPA initially estimated that the project would take seven weeks and cost approximately \$39,000. *See* FAC ¶ 37. T-Scan also alleges that after a year and a half of working with BPA, and an increased cost estimate of \$139,631, T-Scan had still not received a final product that it deemed satisfactory. *See* FAC ¶¶ 37–40. At that point, T-Scan alleges that it ended its contractual relationship with BPA by prohibiting BPA from accessing T-Scan’s computers. *See* FAC ¶ 40. T-Scan asserts that Alfresco is

1 responsible for alleged resulting damages, claiming that Alfresco's alleged fraudulent
2 misrepresentation induced it to contract with BPA.

3 **III. ARGUMENT**

4 Under T-Scan's fraud-in-the-inducement claim, T-Scan alleges that Alfresco is liable
5 for damages caused by BPA's failure to perform because Alfresco caused T-Scan to enter into
6 the contract with BPA by allegedly misrepresenting that BPA had a certified Alfresco engineer
7 on staff. T-Scan's contract claim is essentially the same: T-Scan claims that Alfresco is liable
8 for damages caused by BPA's failure to perform because Alfresco allegedly held out BPA as
9 having a certified Alfresco engineer on staff, and that somehow breached good faith and fair
10 dealing obligations. Both such purported representations rest on the presumption that T-Scan's
11 damages were caused by BPA's failure to deliver timely in accordance with the T-Scan/BPA
12 contract.

13 In T-Scan's suit against BPA, the jury determined that T-Scan was not entitled to
14 damages caused by BPA's failure to perform; rather, T-Scan waived the requirement that BPA
15 produce software by the agreed deadlines, by T-Scan's own conduct or words. *See* Keehn
16 Decl. Ex. D (Verdict at 2). Accordingly, T-Scan should be prevented from re-litigating this
17 issue under the doctrine of collateral estoppel.

18 "The doctrine of collateral estoppel prevents re-litigation of an issue after the party
19 estopped has had a full and fair opportunity to present its case." *Hanson v. City of Snohomish*,
20 121 Wash. 2d 552, 561 (1993). The doctrine ensures the finality of judicial decisions and
21 prevents harassment of and inconvenience to litigants. *Id.* Federal courts apply the collateral
22 estoppel law of the state in which they sit, even when the prior action was in federal court and
23 involved federal questions. *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir.
24 1981). The doctrine has four requirements:

- 25 (1) the issue decided in the prior adjudication must be identical
with the one presented in the second;
- 26 (2) the prior adjudication ended in a final judgment on the merits;

- 1 (3) the party against whom the plea is asserted was a party or in
 2 privity with a party to the prior adjudication; and
 3 (4) application of the doctrine must not work an injustice.

4 *Hanson*, 121 Wash. 2d at 562. In this case, all four elements are satisfied.

5 **First**, the issue decided by the jury in T-Scan's suit against BPA is identical to a
 6 threshold issue presented in this lawsuit. Courts find that issues are sufficiently similar for
 7 collateral estoppel to apply if there is a "substantial overlap between the evidence or
 8 argument...advanced in both proceedings, [if] new evidence or argument involves the
 9 application of the same rule of law as applied in the earlier decided action, and [if] the degree
 10 to which the claims advanced in both actions are 'closely related.'" *Syverson v. Int'l Business*
 11 *Machines Corp.*, 472 F.3d 1072, 1080–81 (9th Cir. 2007) (quotations omitted). Here, we have
 12 T-Scan's admission in the instant lawsuit that the common issue is a "lynchpin." In addition, in
 13 the first suit against BPA, the jury determined that T-Scan was not damaged by BPA's failure
 14 to perform. Here, T-Scan has again claimed that it suffered damages because BPA failed to
 15 perform, due to T-Scan's erasure of the deadlines (despite the alleged failure to meet deadlines
 16 being the core issue). The only difference is that in this suit, T-Scan is attempting to hold
 17 Alfresco liable for these damages. There is substantial overlap between the evidence and the
 18 argument advanced in both proceedings because T-Scan must still be able to prove that BPA's
 19 failure to perform caused legally cognizable damages. T-Scan brought both a fraudulent
 20 inducement and breach of contract claim against BPA in the prior suit, so the claims in both
 21 proceedings are not only "closely related," they are essentially the same.¹ Accordingly, the key
 22 issue is virtually identical, and T-Scan should be estopped from re-litigating it.

23 **Second**, the prior adjudication ended in a final judgment on the merits. The prior
 24 adjudication ended in a jury verdict after the jury heard evidence from both sides. It was a final
 25 judgment on the merits.

26 **Third**, T-Scan was a party (the plaintiff) to the prior adjudication.

¹ See also Civil Cover Sheet (dkt. no. 1-1), noting the case against BPA (2:10-cv-00470 MJP) as a related case.

1 **Fourth**, application of the doctrine will not work an injustice. T-Scan had every
 2 opportunity and motive to present evidence on this issue at trial. A jury spent several days
 3 listening to this evidence. After considering the merits, the jury decided that BPA was not
 4 liable to T-Scan. Holding T-Scan to the jury's verdict will not work an injustice. Rather, it
 5 will ensure judicial consistency.

6 **IV. CONCLUSION**

7 For all of the reasons stated above, Alfresco respectfully requests that the Court grant
 8 partial summary judgment in favor of Alfresco and dismiss the claims for fraud-in-the
 9 inducement of and breach of contract.

10 Respectfully submitted this 16th day of February, 2012.

11
 12 s/Stellman Keehnel

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2012, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following counsel of record:

- **Robert S Apgood**
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Dated this 16th day of February, 2012.

s/Stellman Keehnel
Stellman Keehnel

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